IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1747 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PRAKASHCHANDRA MANGALDAS PATEL & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR TS NANAVATI for Applicant(s) : 1 - 4.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2007

ORAL JUDGMENT

1. ***Rule***. Mr.K.T.Dave, learned Additional Public Prosecutor waives service of rule on behalf of the respondent-State.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners – original accused Nos. 1 to 4 have prayed for an appropriate Writ direction and order directing learned Metropolitan Magistrate, Court No.9, Ahmedabad to proceed with the trial in Criminal Case No. 4562 of 1999 and to conclude the same within time period as this Court may deem fit to limit and specify.

2. It is the contention on behalf of the petitioner – original accused Nos. 1 to 4 that criminal case has been filed against the petitioner in the year 1999 which is numbered as Criminal Case No. 4562 of 1999 and even after a period of 8 (eight) years same has not been decided and disposed of and; that trial has not been concluded. It is submitted that the petitioners are unnecessarily harassed due to delay in concluding the trial and as the original complainant is not remaining present, an application was made below Exh.4 requesting learned Magistrate to close the prosecution evidence. Said application was given on 08.09.2006 and unfortunately learned

Magistrate passed an order 'fix for hearing'. It is submitted that even thereafter application below Exh.5 was given for discharging the petitioners if trial is not to be concluded as original complainant is not remaining present, in that application also the learned Magistrate passed an order 'fix for hearing'. It is submitted on behalf of the petitioner that as no decision was taken by the learned Magistrate either on the application below Exh.4 and/or Exh.5, the petitioner gave application below Exh.7 requesting learned Metropolitan Magistrate to hear and decide and dispose of the applications below Exh. 4 and 5. Even on that application also learned Magistrate has passed the order 'fix for hearing'. Under the circumstances the petitioners have preferred the present petition under Article 226/227 of the Constitution of India for the aforesaid reliefs.

3. A grievance is made that whenever applications are filed the learned Metropolitan Magistrate passes an order 'fix for hearing' and thereafter the matter is adjourned. Ultimately no decision is taken and trial is prolonged and/or

decision on such applications are kept back and/or prolonged. In the present case the complaint is of 1999 and it is numbered as Criminal case No. 4562 of 1999; more than 8 (eight) years have passed and still trial is not concluded. Even the applications below Exh.4 and 5 which are submitted in the year 2006 are not decided and disposed of and; that the application to decide and dispose of aforesaid applications is also adjourned and the learned Metropolitan Magistrate has passed the order 'fix for hearing'. The litigant comes to the Court with a hope that he will get justice as early as possible either he may be accused or complainant and the matters should not unnecessarily prolonged. It is very unfortunate that even complaint of 1999 is not decided and disposed of and the trial is not concluded even after a period of 8(eight) years. Even application for early disposal and/or for same other reliefs are kept pending for years together.

4. Under the circumstances, learned Metropolitan Magistrate, Court No.9, Ahmedabad is directed to decide and dispose of and conclude trial of Criminal case No. 4562 of 1999 within a period of

6(six) months from the date of receipt of this order without fail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

5. Office is directed to sent copy of this order to learned Chief Metropolitan Magistrate, Ahmedabad for his perusal and is directed to see that this order is circulated to all the learned Metropolitan Magistrates under him and to see that such type of order 'fix for hearing' are not passed and such applications are decided and disposed of within a period of 3(three) months from the date of filing of such applications.

[M.R.Shah, J.]

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